

Dickinson Press, Inc. and Local 550-M, Graphic Communications International Union, AFL-CIO. Case 7-CA-39240

March 14, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Pursuant to a charge filed on November 25, 1996, the General Counsel of the National Labor Relations Board issued a complaint and amendment thereto on December 23, 1996, and January 21, 1997, respectively, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 7-RD-3008. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On February 18, 1997, the General Counsel filed a Motion for Summary Judgment. On February 19, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response, the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable

¹In its answer, the Respondent also asserts that the charge is barred by the statute of limitations and the doctrines of estoppel and laches. We reject the Respondent's assertions. The Respondent admits that the charge was filed on November 25, 1996, which is well within 6 months of the date the Union requested bargaining and the Respondent admittedly refused to do so (November 13, 1996). As for the doctrines of laches and estoppel, the Respondent fails to explain how these doctrines have any relevance to this proceeding or excuse its admitted refusal to bargain with the Union. Accordingly, we find that the Respondent's assertions do not warrant denial of the General Counsel's motion. See *Super K-Mart*, 322 NLRB 583 (1996).

in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in Grand Rapids, Michigan, has been engaged in printing and binding books and other reading materials. During the calendar year ending December 31, 1995, the Respondent, in conducting its business operations, purchased and received at its Grand Rapids, Michigan facility goods valued in excess of \$50,000 directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following a second decertification election held February 28, 1996,² the Union was certified on November 8, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All regular full-time and regular part-time bindery employees, shipping and receiving employees, maintenance employees, custodial employees, drivers and artists employed by the Employer at its 5100—33rd Street, S.E. Grand Rapids, Michigan facility; but excluding all lithographic production employees, managerial employees, confidential employees, professional employees, office clerical employees, sales employees, watchmen, guards and supervisors as defined in the Act.³

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

By letter dated November 13, 1996, the Union requested that the Respondent meet and bargain with it for a collective-bargaining agreement covering the unit,⁴ and since the same date, the Respondent has

²The first election was set aside and a second election was directed by decision dated February 6, 1996.

³The unit is described here as set forth in the complaint and original Stipulated Election Agreement and is admitted by the Respondent.

⁴The Respondent's answer admits that the Union sent a letter dated November 13, 1996, but denies that the letter requested that

Continued

failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 13, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Dickinson Press, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 550-M Graphic Communications International Union, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

it meet and bargain. A copy of the Union's letter "requesting dates as soon as possible for negotiations" is attached to the General Counsel's Motion for Summary Judgment. We find that this letter constitutes a request to bargain.

All regular full-time and regular part-time bindery employees, shipping and receiving employees, maintenance employees, custodial employees, drivers and artists employed by the Employer at its 5100—33rd Street, S.E. Grand Rapids, Michigan facility; but excluding all lithographic production employees, managerial employees, confidential employees, professional employees, office clerical employees, sales employees, watchmen, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Grand Rapids, Michigan, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 25, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 550-M, Graphic Communications International Union, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All regular full-time and regular part-time bindery employees, shipping and receiving employees, maintenance employees, custodial employees, drivers and artists employed by us at our 5100-

33rd Street, S.E. Grand Rapids, Michigan facility; but excluding all lithographic production employees, managerial employees, confidential employees, professional employees, office clerical employees, sales employees, watchmen, guards and supervisors as defined in the Act.

DICKINSON PRESS, INC.